

Pension Benefit Guaranty Corporation

82-11

April 1, 1982

REFERENCE:

[*1] 4047 Restoration of Plans

OPINION:

This is in response to several letters to the Pension Benefit Guaranty Corporation (the "PBGC"), pertaining to the restoration of the referenced pension plan (the "Plan") pursuant to Section 4047 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1347. We have concluded that restoration of the Plan under that section may be proper, and we will provide appropriate assistance to the Plan's administrator in its efforts to restore the Plan.

The relevant facts, as they have been represented to us or as we have otherwise become aware of them, are as follows. The * * * Company adopted the Plan for its employees in 1951. The Plan was a tax-qualified, defined benefit, single-employer pension plan that, on enactment of ERISA in 1974, became subject to the termination insurance provisions of Title IV of ERISA, 29 U.S.C. § § 1301 et seq. On May 10, 1979, at which time the Plan was maintained by * * * Corporation (the "Company"), the PBGC received from the Plan's administrator a Notice of Intent to Terminate the Plan. On September 17, 1981, counsel for the Plan's administrator wrote to the PBGC requesting that the PBGC permit the [*2] Plan to be restored, pursuant to Section 4047 of ERISA, 29 U.S.C. § 1347.

We have determined that, if the "Conditions" listed below are fulfilled, the Plan may be restored to its earlier status. On receipt of appropriate assurance that those Conditions will be fulfilled, we shall accordingly permit the Plan's administrator to withdraw the Notice of Intent to Terminate the Plan.

Conditions

1. The Company and every trade or business under common control with the Company, within the meaning of Section 4001(b) of ERISA, 29 U.S.C. § 1301(b) (the "controlled group"), shall agree that, in the event of a subsequent termination of the Plan or of any successor plan, occurring less than ten years after the date of the Plan administrator's withdrawal of the Notice of Intent to Terminate the Plan, they will pay to the PBGC the excess, if any, of

- (a) the current value of the Plan's benefits guaranteed under Title IV of ERISA as of the date of that termination over
- (b) the current value of the Plan's assets allocable to such benefits on the date of that termination.

Thus, the controlled group shall be liable to the PBGC for the amount determined under subsection 4062(b) of ERISA, 29 [*3] U.S.C. § 1362(b), without regard to the limitation to 30% of the controlled group's net worth provided by paragraph (2) thereof.

2. If the Plan or any successor plan terminates less than five years after the date of the Plan administrator's withdrawal of the Notice of Intent to Terminate the Plan, the Company and the controlled group will pay to the PBGC the greater of

(a) the liability to the PBGC under § 4062(b) of ERISA, 29 U.S.C. § 1362(b), that would have been due the PBGC thereunder for the Plan's termination effective May 20, 1979, computed without regard to the 30% limitation of paragraph 4062(b)(2), 29 U.S.C. § 1362(b)(2), or

- (b) the liability determined under Condition 1, supra.

3. The Plan shall be amended to provide that, in the event of its termination, any assets not necessary to provide those benefits described in Section 4044(a) (1-6), 29 U.S.C. § 1344(a) (1-6), i.e., any "residual assets" as described in Section 4044(d) of ERISA, 29 U.S.C. § 1344(d), shall be distributed entirely among Plan participants and beneficiaries in accordance with applicable PBGC regulations (currently Proposed 29 C.F.R. § § 2618.31-32). Such amendment shall not be subject to [*4] modification that would permit any payment of residual Plan assets to any person other than a Plan participant or beneficiary, or a successor plan that fulfills all of the Conditions listed herein.

4. No amendment to the Plan or to any successor plan may be adopted which restricts participation rights or accrual of Plan benefits, limits accumulation of service for vesting purposes, or reduces any benefit entitlements under the Plan or the successor plan.

5. All past, present and future service to the Company shall be considered service for the purposes of benefit accrual, vesting, and participation under the restored Plan or any successor plan.

6. Any Plan participant or beneficiary in pay status shall receive the full benefit to which he (she) is entitled under the terms of the Plan or of any successor plan.

7. The Company shall make all contributions to the Plan required under the Internal Revenue Code or under ERISA, as though the Notice of Intent to Terminate the plan had never been submitted. Such contributions shall include, in particular, any appropriate payments due as the result of past funding waivers, and interest thereon.

The above Conditions shall become effective [*5] upon the PBGC's written grant of a request by the Plan administrator for permission to withdraw the previously submitted Notice of Intent to Terminate the Plan. At that time, the parties to the litigation over the Plan's status will take appropriate steps to terminate that litigation.

I trust these suggestions will prove satisfactory. Please feel free, if you have any questions, to contact of my staff at the address above or at (202) 254-3010.

Robert E. Nagle
Executive Director